HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 52 of 2006 (SB)

1. Vijay Pal Singh s/o Sri Jai Singh
   Village Shibbunagar, Devi Road,
   Kotdwar, District Pauri Garhwal
2. Badris Thapliyal, s/o Sri Divakar Dutt Thapliyal
   Village Vijai Nagar, Tedi
   District Pauri Garhwal
3. Bal Manoj Singh Rawat s/o Sri Balvir Singh
   Village Ojali, District Pauri Garhwal
4. Shailendra Singh s/o Sri Suraj Singh
   Village Pauri, District Pauri Garhwal
5. Satendra Kumar s/o Sri Shish Ram Mamgain
   Villge & Post Naini, Pauri Garhwal..... Petitioners

Versus

1. State of Uttaranchal
2. District Magistrate, Pauri Garhwal
3. Commissioner Garhwal Mandal,
   Pauri Garhwal ..... Respondents

Sri V.K.Bisht, Sr. Advocate for the petitioners
Standing Counsel for the respondents.

Dated: 1.3.2006

Hon. Rajesh Tandon J.

Heard Sri V.K. Bisht, Sr. Advocate assisted by Sri Sudhir Singh for the petitioners and Standing Counsel for the respondents.

By the present writ petition, the petitioners have prayed for a writ of certiorari quashing the advertisement dated 13.1.2006 issued by the respondent no. 2.

Briefly, stated, the District Magistrate, Pauri Garhwal issued an advertisement on 15.5.2002 for filling up 55 posts of Patwaries in the District. The petitioners also submitted applications for such posts. The written examination was held on 16.6.2002. The list of selected candidates of District Pauri Garhwal was cancelled by the Collector on the ground that there was some irregularities in Selection process. The aggrieved candidates filed a Writ petition No. 1464 of 2002 (SB) and Writ petition No. 1483 of 2002 (SB) before this court challenging the order dated 11.10.2002. Single Judge of this Court allowed the petitions on 25.3.2004 against which Special Appeals No. 9 of 2004 and 11 of 2004 were filed by the respondent State of Uttaranchal. Special appeals were allowed by a Division Bench of this court on 9.3.2005 with the following directions:

"In the circumstances, for the reasons as discussed above, both these special appeals deserve to be allowed. Accordingly, the same are allowed. Both the writ petitions mentioned above shall stand dismissed and the judgments of the learned Single Judge dated March 2004 and 25th March passed in writ petitions No. 1464 of 2002 (SB) and 1483 of 2002 (SB) respectively, are set aside. While passing this order, we feel it necessary, interest of justice, to observe that the examination of Patwaris in the district of Pauri may be held afresh permitting all the successful and unsuccessful candidates of the last examination, including the respondents/petitioners, to appear in the written test & physical endurance test and the selection be done in accordance with the Rules."

In compliance of the order dated 9.3.2005 passed by this Court, respondent, no. 2 again issued an advertisement on

9.10.2005, whereby successful and unsuccessful candidates of the earlier examination were asked to appear in written examination on 18.12.2005 at 11.00 AM. However, before declaration of the written examination another advertisement was issued by the respondent no.2 on 13.1.2006 in which the reservation of the seats was given. According to that out of 65 seats 10 seats were reserved for Scheduled caste, 8 seats for Scheduled Tribes, 32 seats for Other Backward Class and 15 seats were unreserved.

On 17.2.2006 this Court has passed the following order:

Heard Sri V.K. Bisht, Senior Advocate assisted by Sri Sudhir Singh, learned counsel for the petitioner and learned Standing Counsel for the respondents.

"By the present writ petition, the petitioner has prayed for a writ of certiorari quashing the Advertisement Dated 13.01.2006 (Annexure No. 3 to the writ petition) issued by respondent no.2, which is against the reservation policy adopted by the State of Uttaranchal.

The contention of the petitioner is that in Special No. 9 of 2004 State of Uttaranchal and others Vs. Apratim Badola and others, a direction was made to the following effect:-

"While passing this order, we feel it necessary, in the interest of justice, to observe that the examination of Patwaris in the district of Pauri may be held afresh permitting all the successful and unsuccessful candidates of the last examination, including the respondents/petitioners, to appear in the written test & physical endurance test and the selection be done in accordance with the Rules."

The grievance of the petitioner is that in spite of this order passed in Special Appeal No. 9 of 2004 and the norms

set up by Government Order dated 18th July, 2001 with regard to representation of 14% for OBC, the advertisement dated 13th January, 2006 is against the Government Order which exceeds 14% for the OBC candidates by reserving 32 seats.

Sri Harendra Belwal on behalf of the State has argued that he will obtain the instruction within three days with regard to the fresh advertisement, which has been made on 13th January, 2006 in continuation of the advertisement made on 15th May, 2002.

In view of such statement given by the learned Standing Counsel, put up on Wednesday i.e. on 22nd of February, 2006 for admission and order.

Learned Standing Counsel shall also reply on the said date as to whether fresh advertisement has been carried out or the old advertisement has been taken into account and if the fresh advertisement has been made, in what circumstances, the fresh advertisement has been made in violation of G.O. dated 18th July, 2001 as well as in violation of order passed in the Special Appeal No. 9 of 2004.

Copy of the order to be given today to both the parties."

A short counter affidavit has been filed by the respondents in which query has remained unreplied.

In view of above, the matter is sent to the District Magistrate, Pauri Garhwal to decide the aforesaid two questions by a reasoned order, within three weeks after the receipt of the certified copy of this order.

Accordingly, the writ petition is disposed of. No order as to costs.

Dated: 1.3.2006 **Rajesh Tandon J.**

*Dhyani